IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 252 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GANIMIYA KASAMMIYA SHEIKH THRO.WIFE SHERBANU SHEIKH

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 252 of 2004

MR UTPAL M PANCHAL for Petitioner No. 1

MS MITS S PANCHAL AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 05/05/2004

ORAL JUDGEMENT

The petitioner above named has preferred this petition under Article 226 of the Constitution of India for appropriate writ, order or direction, for quashing and setting aside an order of detention dated 23/11/03 passed by respondent no.2 herein, in exercise of the powers u/s.3(2) of the Gujarat Prevention of Anti Social

Activities Act, 1985 (for short, "the said Act").

2. It was alleged against the petitioner that one prohibition offence was registered against him before Chokbazar Police Station at C.R.No.291/2003 on 03/10/03 for an offence punishable u/s.66, 65 & 81 of the Bombay Prohibition Act, 1949. It was also alleged against the petitioner that two witnesses had given statements against the petitioner saying that he was engaged in bootlegging activities.

3. On the strength of the aforesaid one registered offence and two statements of unnamed witnesses, the detaining authority found that the petitioner is required to be detained, with a view to prevent him from indulging in bootlegging activities which amounted to a threat to public order, and accordingly, the impugned order of detention was passed against the petitioner.

4. Feeling aggrieved by the said order of his detention, the petitioner has preferred this petition before this Court. It has been contended here that on a mere fact that one offence was registered, it could not be said that there was a threat to public order. It has also been contended that the names of the witnesses were not disclosed to the petitioner, and therefore, the valuable right of the petitioner to make an effective representation against his detention has been denied. That, therefore, the order of detention is illegal and hence, it may be quashed and set aside.

5. On receipt of the petition, Rule was issued and in response to the service of notice of Rule, Ms.Mita S Panchal learned AGP has appeared on behalf of the respondents. I have heard the learned advocates for the parties and have perused the papers.

6. At the final hearing, Ms.S G Patel appearing for Mr.U M Panchal for the petitioner aruges that the present petitioner and the petitioner of S.C.A.No.17785/2003 were co-accused in one solitary offence, which has been made basis for passing the detention order in respect of both the detenus. She also states that even the statements of the two unnamed witnesses are common in respect of both the detenus. Therefore, the case of the petitioner is on par with the petitioner of S.C.A.No.17785/2003.

7. On hearing, it is found that the case of the two petitioner's are on par, and therefore, on the principle of parity, when S.C.A.No.17785/2003 has been allowed, then the present petition is also required to be allowed

and the petitioner detenu is required to be released from detention.

8. For the foregoing reasons and for the reasons recorded in S.C.A.No.17785/2003, this petition is allowed. The impugned order of detention dated 23/11/03 passed by respondent no.1 against the petitioner, is ordered to be quashed and set aside. Detenu, Ganimiya Kasammiya Sheikh Through Wife Sherbanu Sheikh, is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute with no order as to costs. Direct service permitted.

(D. P. Buch, J.)
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